

**Before the
Federal Communications Commission
Washington, D.C. 20554**

)	
In the Matter of)	
)	MB Docket No. 07-91
Third Periodic Review of the)	
Commission's Rules and Policies)	
Affecting the Conversion)	
To Digital Television)	

**JOINT COMMENTS OF
THE ASSOCIATION OF PUBLIC TELEVISION STATIONS
AND THE PUBLIC BROADCASTING SERVICE**

Lonna M. Thompson
Senior Vice President and General
Counsel
Malena F. Barzilai
Senior Counsel
Association of Public Television
Stations
666 11th Street, N.W.
Suite 1100
Washington, D.C. 20001
Phone: 202-654-4200
Fax: 202-654-4236

Katherine Lauderdale
Senior Vice President and General
Counsel
Jill D. Patrone
Associate General Counsel
Public Broadcasting Service
2100 Crystal Drive
Arlington, Virginia 22202
Phone: 703-739-5000

Fax: 703-837-3300

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EXECUTIVE SUMMARY

Clearly the Commission feels an immense responsibility to ensure that the digital transition occurs on time and with minimal disruption to the American public. But the Commission does not bear this burden alone. It is not an exaggeration to say that the future of the broadcast television industry, and Public Television in particular, depends on a successful transition. Public Television has heavily invested in the future of digital television, and more than 94 percent of public television stations are already taking advantage of its myriad capabilities, including high-definition broadcasting, multicasting, and datacasting. Furthermore, public television stations are dedicated to serving their viewers and members, who in disproportionately large numbers receive their television signals over the air. The Commission can be confident that Public Television is committed to this transition.

In light of these shared interests, Public Television offers several suggestions for the Commission's role in facilitating the transition that are designed to clear the way for each station to follow its own smoothest path to digital-only broadcasting. First, we urge the Commission not to take positions that overcomplicate an already complex process. The final Table of Allotments should be viewed as setting forth the maximum coverage contour in which a station *may* operate (assuming a corresponding FCC-authorized construction permit), rather than the exact parameters on which they *must* operate. Also, the February 17, 2009 hard date should be interpreted as the date on which analog transmissions must end, rather

than the required date for each broadcaster to be operating on its full digital transmission facilities.

Second, the Commission should adopt policies that permit stations, which are best situated to map their own ways through the transition, maximum flexibility in doing so. Stations should be freely able to reduce or terminate analog service before the hard date if doing so serves their transitions. The Commission should have a policy that provides for liberal acceptance of flash-cut applications, and an efficient process for stations to alert the Commission of and get approval for as-needed changes. The Commission should not implement the proposed strict standard for post-deadline extensions of construction permits. And the Commission should permit stations to make either early or late transitions to full-power digital broadcast facilities where doing so would not create impermissible interference to another station.

Third, APTS and PBS strongly encourage the Commission to develop a policy in which expedited processing of construction permit applications is granted to all applications from stations whose Congressionally authorized funding is contingent on their receipt of a CP. Finally, APTS and PBS support the Commission's proposal that stations file a form detailing their transition status, but urge that the deadline for such a filing should be at least 60 days after the rules are issued in this proceeding, and caution that some stations may not be in a position to set a timeline because some elements of the transition logistics are beyond their control.

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The Association of Public Television Stations ("APTS")¹ and the Public Broadcasting Service ("PBS")², (collectively referred to as "Public Television")

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation's CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

² PBS is a media enterprise that serves 355 public noncommercial television stations and reaches nearly 73 million people each week through on-air and online content. Bringing diverse viewpoints to television and the Internet, PBS provides high-quality documentary and dramatic entertainment, and consistently dominates the most prestigious award competitions. PBS is a leading provider of digital learning content for pre-K-12 educators, and offers a broad array of other educational services. PBS' premier kids' TV programming and Web site, PBS KIDS Online (www.pbskids.org), continue to be parents' and teachers' most trusted learning environments for children. More information about PBS is available at www.pbs.org, one of the leading dot-org Web sites on the Internet.

hereby submit these comments in response to the Commission's *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding.³

³ *In re Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, MB Docket No. 07-91, FCC 07-70 (rel. May 18, 2007) ("NPRM").

I. PUBLIC TELEVISION STATIONS' PROGRESS REPORT

A. Status of Digital Operations

Public Television has been a pioneer in bringing digital television to the American people. Seven public television stations were among the first few dozen stations to begin broadcasting in digital in November 1998. As of August 15, 2007, 343 public television stations—representing 94.5 percent of nation's 363 public stations and reaching more than 96 percent of television households in the United States—are broadcasting digital signals.⁴

In addition, Public Television is unmatched in its exploration of the expanded possibilities the digital medium offers:

- **High-Definition.** Well over 80 percent of public television stations air high-definition programming. Currently, stations both receive high-definition programming from PBS and other distributors and produce their own HD programming. By fall 2008, PBS will distribute its National Program Service (NPS) in high-definition, essentially merging the NPS and PBS's HD channel.
- **Multicasting.** Nearly all public television stations are already using their digital signals to broadcast multiple streams of standard-definition programming. Multicasting enables stations to expand upon the rich diversity of educational, public affairs, and children's programming they provide. Many stations offer streams focused on family, children's, or regional programming, and Channel 13 (New York) and WGBH (Boston) have launched three new multicast channels that are carried by many local stations: *World*, a non-fiction channel designed to give viewers a window on the world; *Create*, which provides a variety of "do it yourself" offerings; and *V-me*, a Spanish-language channel.
- **Datacasting.** Public television transmitters also have the ability to provide localized noncommercial educational services over a broadband-like digital infrastructure to all Americans. For example,

⁴ PBS data.

WHYY (Philadelphia) is “datacasting” adult basic education materials. Using a combination of national and local programming, WHYY has digitized 58 half-hour video segments and more than 700 pages of text for delivery to desktop computers. These computers can receive and store datacast transmissions and have been placed—in partnership with the Workforce Investment Boards of Chester, Philadelphia, Delaware and Montgomery Counties—in libraries, hospitals, community centers and colleges, locations easily accessible to the targeted population. In addition, public television uses its bandwidth to support public alert systems, as well as closed networks to enable public safety and emergency management agencies to securely transmit critical information. Several public television stations and state networks have already pioneered local public safety datacasting networks. On a national level, APTS has teamed with the Department of Homeland Security to use public television’s digital network to enhance the Emergency Alert System. In the past several years, DHS and APTS have conducted a successful Digital Emergency Alert System (DEAS) pilot, and by the end of 2007, Public Television will have completed the national deployment of a digitally-based federal public safety alert and warning system.

In short, public television stations are maximizing their digital capabilities to serve the public interest both by enhancing their traditional educational offerings and by venturing into entirely new arenas with an eye toward our nation’s priorities in the post-9/11 world.

Public Television’s ability to utilize the opportunities presented by digital television is enhanced by the commitment of many of the nation’s multichannel video programming distributors (“MVPDs”) to carry its full array of digital programming. In January 2005, APTS and PBS signed an agreement with the National Cable and Telecommunications Association that paved the way for digital carriage of the signals of public television stations by larger cable providers. In June 2006, APTS and PBS penned a similar agreement with Verizon that governs carriage of public television stations on its FiOS service. And recently, APTS and

PBS reached a digital carriage agreement with the American Cable Association, which represents more than 1,000 of the nation's smaller cable companies, many of whom provide service in rural areas. Currently, the agreements obligate participating MVPDs to carry the digital signals of *one* public television station per market, but after the digital transition, those MVPDs will carry up to four broadcasting streams of *every* public television station in the relevant market.

All but a handful of the public television stations that are broadcasting digital signals are also continuing to transmit analog signals, at a tremendous cost to the public television system. PBS estimates that stations spend a total of \$36 million per year in electricity to maintain their analog signals, and an additional \$20 million per year to repair and replace analog equipment. Given the significant cost savings that the analog switch-off will provide, the breadth of opportunities the digital medium offers, and the tremendous benefits the MVPD carriage agreements will provide, public television stations are committed to making the transition and relinquishing their analog spectrum by February 17, 2009.

B. Status of Public Broadcasters' Transition

According to the proposed new DTV Table of Allotments,⁵ 259 public television stations will be remaining on their current digital channels, and 103

⁵ *In re Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking (Aug. 6, 2007) ("*Seventh Report and Order*"), Appendix B.

stations will be changing digital channels.⁶ Of the stations that are changing channels, 85 are moving to their current NTSC channels and 18 are moving to different channels. Compared to commercial broadcasters, a slightly lower percentage of public broadcasters will change channels during the transition. Nevertheless, Public Television still faces a significant amount of preparation before the transition is complete.

1. Stations remaining on their current DTV in-core channels

Of the 259 public television stations that are remaining on their current digital channels, 176 are included on Appendix D to the *NPRM* in this rulemaking, the “List of Stations Believed Ready to Commence Post-Transition Operations.” Three stations are listed erroneously. One of those stations, WYES (New Orleans) has informed us that it should not be on the list because it has experienced delays due to Hurricane Katrina. Another, WQLN (Erie, PA), states that it should not be on the list because it is licensed at a lower power level than that authorized in the new DTV Table of Allotments because of an international coordination issue. We have also learned that WLRN (Miami) should not be on the list because it has experienced defects in the construction of its transmission facilities and antenna

⁶ One public television station, WDCP, intends to cease operation after February 17, 2009 and requested that the Commission delete its channel designation on the DTV Table of Allotments.

malfunctions.⁷ APTS and PBS have not been notified by any other stations that they are on the list in error.

In addition, APTS and PBS believe there are 38 stations that have inadvertently been omitted from Appendix D to the *NPRM*.⁸ To the knowledge of APTS and PBS, these stations are licensed and operating at full power on their final DTV channels and according to the contours set forth in Appendix B of the new Table of Allotments, and thus are ready to commence post-transition operations.

However, there are 45 other public television stations that are remaining on their current digital channels but are not ready to commence post-transition operations. As the Commission notes, this includes stations that have not built digital facilities and have construction permits (“construction permits” or “CPs”) or extensions of their “checklist” deadlines, as well as stations that have constructed reduced facilities and are operating pursuant to special temporary authorities (STAs). In addition, the list includes stations that have pending applications with

⁷ Comments of the School Board of Miami-Dade County, Florida, *In re Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91 (Aug. 3, 2007).

⁸ These stations are KTOO (Juneau, AK), WFIQ (Florence, AL), WHIQ (Huntsville, AL), WAIQ (Montgomery, AL), KQED (San Francisco), WGCU (Fort Myers, FL), WCEU (New Smyrna Beach, FL), KCDT (Coeur D’Alene, ID), KUID (Moscow, ID), KISU (Pocatello, ID), KIPT (Twin Falls, ID), KLTS (Shreveport, LA), WMPT (Annapolis, MD), WMPB (Baltimore, MD), KTCA (St. Paul, MN), KOZJ (Joplin, MO), WMAB (Mississippi State, MS), WUND (Columbia, NC), KMDE (Devils Lake, ND), KNPB (Reno, NE), WEKW (Keene, NH), WLED (Littleton, NH), WNJS (Camden, NJ), WNJT (Trenton, NJ), WNED (Buffalo, NY), WNPI (Norwood, NY), WPBS (Watertown, NY), WGTE (Toledo, OH), KRSC (Claremore, OK), KFTS (Klamath Falls, OR), WIPM (Mayaguez, PR), KCSD (Sioux Falls, SD), KUSD (Vermillion, SD), KAMU (College Station, TX), KBYU (Provo, UT), WHLA (La Crosse, WI), WPBY (Huntington, WV), WNPB (Morgantown, WV).

unresolved international coordination issues.⁹ APTS and PBS agree with the Commission that some stations in this category may have to make changes that will involve significant time or effort.

2. Stations returning to their analog in-core channels

As noted above, 85 public television stations are slated to return to their analog channels for digital operation after the transition. APTS and PBS concur with the Commission's assessments that these stations face a variety of challenges related to tower construction, antenna replacement or relocation, transmitter replacement or power adjustments. In addition, as the Commission notes, these stations may be required to diminish or terminate, either temporarily or permanently, their analog service in order to complete their digital build-out.

Delays in receiving international coordination add another layer of complexity for a large number of the public television stations returning to their analog channels. In its *Seventh Report and Order*, the Commission noted 29 public television stations in border zones that are returning to their analog channels.¹⁰

⁹ For example, WPSU (Clearfield, PA) originally received a CP to maximize, and the station built out its maximized digital facilities in 2003. When WPSU applied for a CP modification to conform its authorization to its as-built facilities—accounting for a slight antenna pattern change that actually *reduced* the level of radiation in the direction of Canada from the facilities authorized in its original CP—Canada raised interference concerns. The station has been required to operate at low power on an STA for the past four years while it awaits international coordination. A university licensee, WPSU has built its station with public funding, on the reliance of a CP granted by the FCC, and is not in a position to undertake a significant, unexpected expenditure to rectify the situation.

¹⁰ *Seventh Report and Order*, Appendix D4.

These stations might need to proceed with constructing authorized facilities to the extent approved by Canada or Mexico, even if those facilities differ from the facilities sought by the station, if international coordination issues delay action on their construction permit applications and cannot be resolved in time to allow construction to be completed before February 17, 2009.

The transition is further complicated for many public television stations by the fact that they are dependent on money appropriated by Congress to fund the purchase and installation of digital equipment. The largest pool of money for stations that are changing channels will come from Round 10 of the Corporation for Public Broadcasting's ("CPB") Digital Distribution Fund (DDF). The CPB has begun sending out Grant Agreements to approved recipients of Round 10 grants, but only 10 percent of the grant money will be provided to receiving stations before they have obtained construction permits.¹¹ The National Telecommunications Information Administration (NTIA) will provide additional money through its Public Telecommunications Facilities Program (PTFP) grants for Fiscal Year 2007, but the regulations governing PTFP state that grants may not be disbursed until the NTIA "receives confirmation that the FCC has granted the necessary

¹¹ Upon execution of a Grant Agreement, a DDF Grantee receives 10 percent of the grant amount, but only if the grantee can certify that it has not sought a modification to its proposed DTV channel assignment and that it is not aware of any third parties that have filed objections to its proposed DTV channel assignment. The bulk of the grant amount, 65 percent, will be disbursed to the Grantee after it has received a construction permit. The balance of the grant amount, 25 percent, is to be disbursed after the completion of the rechannelization project.

authorization.”¹² Thus, stations are able to receive little, if any, of their federal funding without valid construction permits, which they cannot obtain until after the Commission completes the present rulemaking.

3. Stations moving to a completely new in-core channel

The remaining 18 public television stations will move to a new channel for post-transition digital operations. APTS and PBS agree with the Commission’s assessment that these stations face similar challenges to those returning to their analog channels—including international coordination delays¹³ and inability to obtain government funding—as well as the challenge of coordinating with other stations to complete their moves. Furthermore, as the Commission notes, some of these stations must grapple with the fact that their tower site cannot support all of

¹² 15 CFR § 2301.21(a)(1). The regulations governing the Department of Agriculture/Rural Utilities Service’s Public Television Station Digital Television Grant Program, which provides money to some rural stations, state that a grant application should include “evidence that the FCC has authorized the initiation of digital broadcasting at the project sites” but also say that the Rural Utilities Service may “make advance of funds . . . conditional upon the submission of a construction permit.” 7 CFR § 1740.9(i).

¹³ Seven public television stations that are moving to entirely new channels after the transition are located in border zones and thus might need to proceed with constructing authorized facilities to the extent approved by Canada, even if those facilities differ from the facilities sought by the station, if international coordination issues delay action on their construction permit applications and cannot be resolved in time to allow construction to be completed before February 17, 2009. *See Seventh Report and Order*, Appendix D4.

the antennas necessary for the stations to maintain their current analog and DTV signals while preparing for post-transition operations.¹⁴

II. COMMISSION'S ROLE IN FACILITATING TRANSITION

It is clear from its *NPRM* that the Commission feels an immense responsibility to ensure that the digital transition occurs on time and with minimal disruption to the American public. The Commission does not bear this burden alone. It is not an exaggeration to say that the future of the broadcast television industry, and Public Television in particular, depends on a successful transition. Public television stations can ill afford to broadcast both analog and digital signals indefinitely. More importantly, they cannot bear to alienate their viewers and members, who in disproportionately large numbers receive their television signal over the air. Broadcasters, especially public television stations, are the Commission's faithful allies in the transition.

Public Television's suggestions for the Commission's role in facilitating the transition are based on the strength of this partnership. First, the Commission does not need to take positions that overcomplicate an already complex process. The final Table of Allotments should be viewed as setting forth the maximum coverage contour in which a station may operate (assuming a corresponding Commission-authorized construction permit), rather than the exact parameters on

¹⁴ For example, the transition of WNVC (Fairfax, VA) is being hindered by an uncooperative tower tenant whose lease does not expire until the end of February 2009. WNVC is thus concerned that its commencement of post-transition operations might be delayed by a few weeks after the hard date.

which they must operate. And the hard date should be interpreted as the date on which analog transmissions must end, rather than the required date for each broadcaster to be operating on its full digital transmission facilities as provided in the corresponding construction permit. Second, the Commission should adopt policies that permit each station, which is best situated to map its own smoothest path toward digital-only broadcasting, maximum flexibility in doing so. Third, APTS and PBS strongly encourage the Commission to develop a policy in which expedited processing of construction permit applications is granted to all applications from stations whose federal funding is contingent on their receipt of a CP. Finally, APTS and PBS support the Commission's proposal that stations file a form detailing their transition status, but urge that the deadline for such a filing should be at least 60 days after the rules are issued in this proceeding, and caution that some stations may not be in a position to set a timeline at that time.

A. Commission Should Not Overcomplicate an Already Complex Process

The 18 months leading up to February 17, 2009 will present numerous challenges that are unavoidable. After this rulemaking is complete, the Commission must process the construction permit applications of the nearly 650 stations that are changing channels after the transition. Hundreds of stations must order new equipment from a relatively small number of manufacturers and arrange for its installation by a limited number of technicians. For many stations, harsh weather makes it impossible to perform antenna or transmitter installations and modifications from October to April each year; thus, these stations have one brief

construction season remaining in which to complete this work. Many stations must swap antennas while minimizing disruptions to viewers. And the transition of the stations moving to entirely new channels is not unlike a row of dominoes: Some stations' movements are dependent on the movements of others, and one station's difficulties can lead to delays for many more. Given these many inevitable obstacles, APTS and PBS urge the Commission not to develop policies that introduce additional, unnecessary layers of complexity to this process.

1. The new Table of Allotments should be viewed as setting out maximum contours, not required parameters.

The Commission proposes in its NPRM that “[s]tations that have a license to operate or a CP to construct the facilities they want to retain for post-transition use should file applications [to modify] if their licensed facilities or CP do not match the proposed new DTV Table Appendix B”¹⁵ In this way, the Commission indicates that the new DTV Table Appendix B sets forth the required parameters for stations' post-transition facilities, rather than the maximum coverage contour for which the station is permitted to build. This proposed rule would create extensive, unnecessary work for the FCC—and licensees—with regard to stations that are otherwise well situated to complete their transitions.

APTS and PBS are aware of numerous stations that are remaining on their current digital channels, have built out their final DTV facilities and hold licenses matching those facilities, but whose facilities do not precisely match those stated in

¹⁵ *NPRM* ¶ 93.

the new DTV Table Appendix B.¹⁶ Under the Commission's proposed rule, these stations will be required to file modification applications and modify their facilities to conform to the parameters set in the new Appendix B. APTS and PBS urge instead that a station whose signal is not reaching beyond the service contour protected by the parameters in the new Appendix B should *not* be required to file a modification application, even if its facilities do not precisely match those listed in Appendix B. Such a rule would permit the Commission to focus its efforts on the needs of stations that are changing channels or those stations staying on their current channels that do not yet have construction permits or licenses for their desired post-transition facilities. In addition, such a rule would prevent stations from expending scarce resources to make unnecessary changes. The transition would be better served if the Commission views the Table Appendix B as specifying *maximum* facilities, not *exact* requirements.

2. Ending analog broadcasting by February 17, 2009 should be Commission's primary focus.

As the Commission states in its *NPRM*, Congress in the Digital Television and Public Safety Act of 2005 set February 17, 2009 as the date on which full-power television stations must cease analog transmissions. 47 U.S.C. § 309(j)(14)(A). However, nowhere in that—or any—legislation has Congress required that all full-power stations have built, or be operating on, their full, authorized digital facilities

¹⁶ See, e.g., Comments of Smoky Hills Public Television Corp., *In re Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91 (Aug. 13, 2007) (discussing situation of KSWK in Lakin, KS).

by February 18, 2009. Stations that are operating pursuant to an STA after February 17, 2009, stations that are still operating on their pre-transition digital channels, and even stations that are not on the air in digital at all are not in violation of the law as long as they have terminated analog transmissions by 11:59 p.m. on February 17, 2009.¹⁷

APTS and PBS understand and share the Commission's goal that viewers experience minimal disruption to their service through the transition. All public television stations are working diligently to provide digital signals to as many of their viewers as possible, and to cable head-ends and satellite receive sites, by the hard date. However, the Commission's oversight in this area should be, first and foremost, focused on ensuring that all stations are in position to terminate analog transmissions by February 17, 2009.

Policies such as liberally permitting early reduction or termination of analog transmissions, and permitting stations to remain on their pre-transition digital channels after the hard date if they cause no interference, further this goal, and the Commission should adopt such policies. However, setting deadlines on which stations must have completed construction of their full, authorized post-transmission digital facilities, and fashioning complex waiver policies and harsh penalties for stations that are not able to do so, complicates this process and takes the Commission's and stations' eyes off the real meaning of the hard date. Thus, APTS and PBS strongly urge the Commission to permit stations to request an STA

¹⁷ We do recognize that the law requires stations operating in digital on out-of-core channels to terminate those operations after February 17, 2009.

to build less than their full, authorized post-transition facilities and to fully build out at some time after the hard date. February 17, 2009, need not be, as the Commission has suggested, “the date certain for the end of the DTV transition.”

B. Stations Need Maximum Flexibility to Follow Their Own Smoothest Paths Through The Transition

No two public television stations are alike, and it seems all are in different situations with regard to readiness for digital-only broadcasting. But in a couple of respects, the stations have found common ground. First, they are all deeply invested in the success of the digital transition. Second, each station is the most knowledgeable party concerning its own situation. In light of these facts, the best approach the Commission can take is to adopt policies that give each station the flexibility to take its own smoothest path toward the digital transition.

1. Liberal permission to reduce or terminate analog signal prior to hard date

The vast majority of stations that are changing channels after the transition will need to reduce or terminate analog transmissions—on both out-of-core and in-core analog channels—at some point prior to February 17, 2009. For example, like a number of stations, WNMU (Marquette, MI), will have to terminate its in-core analog signal in Fall 2008 in order to ready itself for final digital transmissions before its tower becomes inaccessible for the winter. KCTS (Seattle), like some other stations, will need to reduce power on its in-core analog channel in November

or December of 2008 to remove one of its parallel transmitters and make room for its new digital equipment. WMEM (Presque Isle, ME) and WCBB (Augusta, ME), which are returning to their analog channels for post-transition operations, hope to reduce analog power before Winter 2008 to rebuild their transmitters to support digital operations. Many stations will need to shut off analog power temporarily to move their digital antennae to the top of their towers and side-mount their analog antennae. Most stations will not be in full control of the scheduling of this work because they will be at the mercy of the availability of the required installation crews.

In light of this, Public Television supports the Commission's proposal to apply a "rebuttable presumption" standard to out-of-core stations seeking to permanently reduce or terminate analog service, but we are gravely concerned about the stricter standards the Commission proposes to institute regarding in-core stations that wish to reduce or terminate their analog service before February 17, 2009. In particular, the Commission suggests that it would not presume that a long-term or permanent reduction in a station's analog service is in the public interest if the proposed reduction causes the loss of an area's only noncommercial educational television service.¹⁸ Such a policy would make it much more difficult for many public television stations to receive permission to reduce or terminate analog service, even where a smooth and timely transition would be otherwise impossible. Public Television understands and shares the Commission's desire to minimize disruptions

¹⁸ *NPRM* ¶ 44.

to television viewers, but the realities of the transition process, with the hard date growing ever closer, necessitate a liberal standard of review of applications for reduction or termination of analog service where necessary to facilitate the digital conversion.

Thus, Public Television proposes that the Commission apply a “rebuttable presumption” standard to all stations seeking to reduce or terminate analog service after July 1, 2008, and suggests that the Commission consider setting a date after which it will freely allow stations to reduce or terminate analog transmissions. Many public television stations consider this flexibility essential if they are to achieve a successful transition.

2. Liberal acceptance of applications to flash-cut

A handful of public television stations have already received approval to “flash cut” from their analog channels to their post-transition digital channels, and we expect that more stations will wish to apply to flash cut going forward. The Commission in its *NPRM* makes clear that it intends to focus on facilitating stations’ efforts to construct their final digital facilities, as evidenced by its proposal that stations that are changing channels should be permitted to abandon construction on their pre-transition digital facilities in favor of building their post-transition facilities.¹⁹ Public Television submits that a policy of granting flash-cut

¹⁹ See *NPRM* ¶¶ 61-67.

requests in all cases where it would facilitate a station's transition is consistent with the Commission's new focus.²⁰

3. Expeditious process for as-needed changes as hard date approaches

Whenever a station makes a significant change in its operations, it is inevitable that unexpected situations will arise. And with several hundred stations changing channels at the digital transition and many others completing their digital facilities, the Commission can expect an onslaught of last-minute requests as February 17, 2009 draws near. In the interest of facilitating the transition, the Commission will need to develop a system whereby stations can easily notify it of as-needed changes and, when necessary, receive speedy approval of minor modifications. The success of the transition will depend on the Commission's ability to be nimble with respect to stations' arising needs.

4. Reasonable standard for post-deadline extensions

The Commission proposes extremely strict standards for stations seeking extensions of the DTV construction deadlines in the future. In particular, the

²⁰ A prime example of a public television station that would benefit from a policy of liberal acceptance of flash-cut applications is KGTF (Agana, Guam). KGTF is currently assigned channel 5 for digital operations, but it sought and received its analog channel, 12, for post-transition digital operations. The station cannot afford to build its digital facilities twice, so it will likely seek to return channel 5 and flash-cut on channel 12 at the transition. Permission to do so would aid KGTF's transition and enable it to provide post-transition digital service to its viewers.

Commission suggests that a station seeking an extension before February 17, 2009, must show that it is the subject of a bankruptcy or receivership proceeding or is experiencing severe financial hardship, and that a station seeking an extension after February 17, 2009 will be subject to a “tolling” standard.²¹ Such harsh rules create an unnecessarily hostile relationship between stations and the Commission despite their common interest in achieving a successful transition. Stations are strongly invested in moving to digital-only broadcasting. If they are unable to do so in the time required, their failure to serve their viewers is punishment enough without extraordinary penalties from the FCC. Thus, the Commission should continue to adhere to its current rules concerning extensions of DTV construction deadlines.

5. Early or late transitions where possible

APTS and PBS are aware of public television stations that would choose to move to their post-transition channels early if possible, as well as stations that would choose to remain on their in-core, pre-transition channels for a time after the transition.²² The flexibility to do this will be integral for stations whose movement is dependent on, or will affect, the movement of other stations. Therefore, Public Television strongly supports the Commission’s proposals to permit stations to make

²¹ See *NPRM* ¶¶ 82-87.

²² For example, the transmitter of station WMEM (Presque Isle, ME) is not accessible by vehicle during the winter months. Thus, the station, which is returning to its analog channel, either will need to reduce analog power to rebuild its transmitter in Fall 2008, or remain on its current, in-core digital channel until it can make the changes to its transmitter in Spring 2009.

early or late transitions where they will not cause impermissible interference to other authorized stations. In addition, Public Television suggests that a station interested in early or late transitioning should be required to indicate its interest on the new Form 387 DTV Transition Status Report.

C. Commission Should Provide Expedited Processing Of All CP Applications From Stations Whose Federal Funding Is Contingent On Receipt of CP

Public Television commends the Commission for its intention to provide expedited processing to stations that timely apply for a construction permit to build their post-transition channels.²³ We appreciate that the Commission recognizes that stations need the maximum time to order equipment and build their facilities, and that some stations may need to complete their facilities well before February 17, 2009. Furthermore, Public Television agrees with the criteria that the Commission suggests to determine which stations should receive expedited processing. However, we suggest one modification to the Commission's proposal.

As discussed above (see Section I.B.2.), many public television stations are dependent on grants from the CPB and/or the federal government to build out their digital facilities, and in many cases stations cannot receive those grants, or large portions of those grants, until they are in possession of construction permits for those facilities. Thus, Public Television proposes that the Commission adopt a policy to grant expedited processing of its CP application to any station that can demonstrate that its receipt of Congressionally authorized funding is contingent

²³ See *NPRM* ¶ 95.

upon its grant of a CP. Such a policy will greatly assist public television stations that are constrained by the rules of the various grant programs.

D. Stations Should Not Be Required To Submit Form 387 Until At Least 60 Days After The Commission Adopts The Report And Order In This Proceeding

APTS and PBS are very supportive of the Commission's proposal to require all stations to submit a Form 387 DTV Transition Status Report detailing their progress in the conversion to digital-only broadcasting, as well as the Commission's intention to make public the forms submitted. These reports will be an excellent resource for organizations such as ours, the National Association of Broadcasters, and the Association for Maximum Service Television, who plan to collaborate to assist stations in the choreography of the hundreds of channel changes that will need to occur in the coming months. However, we are concerned about the Commission's proposed filing deadline of December 1, 2007, which might predate the publication of a *Report and Order* in this proceeding. Without rules governing the rest of the transition, stations will not be able to provide reliable information on their status.

Thus, APTS and PBS propose that the Commission adopt a policy requiring that stations submit the new Form 387 at least 60 days after the *Report and Order* in this proceeding is published in the Federal Register. This policy will enable each station to get a better sense of its road ahead and to provide more detailed

information that will be of greater use to the Commission and industry organizations.

Furthermore, to the extent the Commission expects each station to provide a detailed timeline of its plans to complete construction and testing of its full post-transition facility, APTS and PBS urge the Commission to recognize that stations' ability to provide such specificity is hindered by the fact that some aspects of the transition are beyond their control. For example, hundreds of stations are dependent on the services of a relatively few equipment manufacturers and installers, and it is not within the power of stations to dictate the schedule of those third parties. We hope that the Commission will appreciate these limitations.

III. CONCLUSION

APTS and PBS are committed to working with the Commission to ensure that the digital transition is successful, and in light of this collaborative relationship, the Commission should adopt policies in this proceeding that preserve the abilities of individual broadcast stations to implement the transition in a manner that will ensure the success of each station's transition and continued service to the public.

Respectfully submitted,

_____/s/
Lonna M. Thompson
Senior Vice President and General
Counsel
Malena F. Barzilai
Senior Counsel

Association of Public Television
Stations
666 11th Street, N.W.
Suite 1100
Washington, D.C. 20001
Phone: 202-654-4200
Fax: 202-654-4236

_____/s/
Katherine Lauderdale
Senior Vice President and General
Counsel
Jill D. Patrone
Associate General Counsel
Public Broadcasting Service
2100 Crystal Drive
Arlington, Virginia 22202
Phone: 703-739-5000
Fax: 703-837-3300

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